



The ADA, Addiction and Recovery

The Americans with Disabilities Act (ADA) ensures that people with disabilities have the same rights and opportunities as everyone else. This includes people with addiction to alcohol and people in recovery from opioid and substance use disorders. This is a very complex subject due to developing court cases.

Structure of the ADA

Below are the first three titles of the ADA. This is the structure under which people's rights are protected and responsibilities are defined.

Employment (Title I): This title focuses on reasonable accommodations, which can include a change in the way work is performed.

State and local governments (Title II): This title focuses on access to services, programs, and activities in public education, corrections and the courts etc.

Places of public accommodation (Title III): This title focuses on access to goods and services in such places as sober homes, health care facilities and other private businesses that serve the public.

The ADA applies to addiction to alcohol and to the illegal use of drugs differently. This fact sheet explains these differences through scenarios.

Definition of Disability

A person has a disability under the ADA if the person has:

1. A physical or mental impairment that substantially limits one or more **major life activities**, e.g. someone with bi-polar disorder, diabetes or addiction to alcohol; or
2. A **history** of an impairment that substantially limited one or more major life activities, e.g. someone who has a history of cancer; or someone in recovery from illegal use of drugs; or
3. Been **regarded** as having such an impairment, e.g. someone who has a family member who has HIV, so is assumed to have HIV as well and face discrimination as a result, or someone who is perceived to have a disability and is treated negatively based on the assumption of disability.

Major life activities include, but are not limited to: walking, seeing, caring for oneself, learning, working, thinking, communicating and also the operation of bodily functions, such as neurological and brain functions.

Addiction to Alcohol

Regardless of whether the addiction to alcohol is current or in the past, it is generally considered a disability because it is an impairment that affects brain and neurological functions.



Scenario: Michael is often late for work. His supervisor warns him about his tardiness. The third time Michael is late, his supervisor gives him a written warning, stating that one more late arrival will result in termination. Michael tells his supervisor that he is addicted to alcohol. He says his late arrivals are due to his drinking and that he needs immediate time off for treatment.

Is Michael protected under Title I of the ADA? Yes, he is a person with a disability (addiction to alcohol), but it is complicated. The employer does not have to withdraw the written warning nor grant an accommodation that supports Michael's drinking, like allowing him to arrive late in the morning. The employer can require an employee with addiction to alcohol to meet the same standards of performance and behavior as other employees. The employer must grant Michael's request to take leave to enter a rehab program, unless the employer can prove that Michael's absence would cause a great difficulty or expense (undue hardship).

Scenario: Isabella's manager hears a rumor that she is addicted to alcohol, and reassigns her to a less stressful job with lower pay because of concerns that work stress contributes to her drinking, despite the fact that she has not had any work-related problems.

Is Isabella protected under the ADA? Yes, she is being **regarded** as having a disability, and has been negatively affected. Isabella's manager violated the ADA when he reassigned Isabella to a lower paying job.

Illegal Use of Drugs

The ADA protects a person in recovery who is no longer currently engaging in the illegal use of drugs, and who can show that they meet one of the three definitions of disability (see above definition of disability).

Illegal use of drugs means:

- Use of illegal drugs such as heroin or cocaine.
- Use of prescription medications such as OxyContin or Morphine

BUT the person has no prescription;
OR is using more than is prescribed;
OR has a fraudulent prescription.

In recovery means:

1. Is in recovery from a substance use disorder;
2. Has ceased engaging in the illegal use of drugs;
3. Is either participating in a supervised rehabilitation program; or
4. Has been successfully rehabilitated.

What does "current" mean?

1. "Illegal use occurred recently enough to justify a reasonable belief that a person's drug use is a real and ongoing problem."
2. Under the ADA, whether someone is currently using drugs illegally is decided on a case-by-case basis.

Scenario: Marianna has been **cocaine-free** for eight years. She applies for a job that she is qualified to do. The employer refuses to hire her because he knows about her past addiction.

Is Marianna protected under Title I of the ADA? Yes, she is protected under the ADA because she has a history of an impairment (addiction to cocaine), and has refrained from the use of illegal drugs for eight years which is a good indication that there is not an ongoing problem. The potential employer violated the ADA when he refused to hire Marianna because of her recovery status.

Medication-Assisted Treatment

In medication-assisted treatment (MAT), a person is prescribed medication such as Suboxone, Methadone, or Vivitrol to treat their addiction.

Scenario: Tom is in MAT. He appeared in family court and requested that he begin to see his children on the weekend. The judge responded to his request saying, “You’ll see your children when you get off Suboxone”.

Is Tom protected under Title II of the ADA? Yes, he has a **history** of addiction. MAT participants usually have a history of addiction to controlled substances. Family court is regarding the use of Suboxone as though it is an illegal drug. Suboxone is a legally prescribed medication to help Tom function just like insulin is prescribed for the health and function of a person with diabetes. Tom’s use of Suboxone cannot, by itself, justify a refusal to let Tom see his children on the weekend.

What if the court found out that he recently used cocaine while in MAT? Would he have protections under the ADA? No, Title II does not protect individuals who are “currently engaging in the illegal use of drugs.”

Scenario: Alex had a double hip replacement and needs to go into a private rehabilitation facility for physical therapy for a month. When the rehabilitation facility finds out he is being prescribed methadone, they refuse to accept him as a patient.

Is Alex protected under Title III of the ADA? Yes, methadone is a legally prescribed drug used to treat addiction. The rehab facility violated Title III of the ADA when it denied Alex admission based upon his medical assisted treatment.

Addiction and Legal Use of Drugs

Scenario: Jennifer became addicted to Percocet while taking the medication in a prescribed manner and in prescribed amounts.

Is Jennifer protected under the ADA? Yes, she is protected under the ADA because she is legally using a drug as prescribed for an underlying condition. However, if she takes more than prescribed, she may not be covered under the ADA.

Need more information?

If you have questions about your rights or obligations under the ADA, contact your local ADA Center. Each center has ADA specialists who provide information and guidance to anyone requesting ADA information. You can call toll-free at 1-800-949-4232. You can also email your local center by clicking the following link and completing the form: <https://adata.org/email>. All calls and emails are treated anonymously and confidentially.

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<http://www.NewEnglandADA.org>

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